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APR 30 2004

In re: Michael S.H. Chu et al. Confirmation No.: 6707
Serial No.: 09/430,050 Examiner: A. Lam
Filing Date: October 29, 1999 Group Art Unit: 1641
Docket No.: 1001.1258101 Customer No.: 28075
For: SPLIT VALVE FOR PEEL-AWAY SHEATH

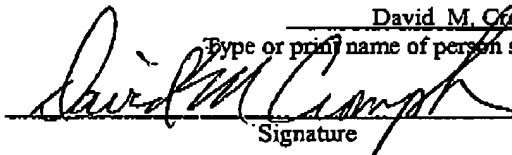
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR § 1.181
TO WITHDRAW FINALITY OF OFFICE ACTION**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. §1.8 (1)(B))**

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office at fax number 703-872-9306 on the date shown below.

David M. Crompton

Type or print name of person signing certification


Signature2/27/04
Date

Dear Sir:

Applicants hereby petition the Commissioner for withdrawal of the finality of the Office Action mailed December 31, 2003. The facts are as follows.

In the non-final Office Action mailed June 30, 2003, the Examiner stated, in the Response to Arguments section on pages 6-7, that the valve (10) in the Heck reference "is intended to close a passage to prevent fluid flow." The Examiner also stated that "the valve that Heck discloses must pinch the medical device in order to prevent blood flow." These statements suggested to Applicants that the Examiner may not have had a clear understanding of the function of a hemostasis valve such as that taught by the Heck reference. The Heck reference

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does not provide a general description of a conventional hemostasis valve, so Applicants provided a description on pages 3-5 of the response filed September 29, 2003. Applicants additionally provided various references describing the operation of hemostasis valves, which references were provided with the response. Applicants also pointed out specific passages in the Heck reference that describe the operation of the disclosed valve. Finally, Applicants discussed, on pages 6-12 of the response, numerous references cited by Heck for background teachings of hemostasis valves.

In response to the detailed description and references explaining how a conventional hemostasis valve such as Heck operates, the Examiner, in the Final Office Action on page 6, merely states "Applicant argues that the standard definition of a hemostasis valve seals around a device, as opposed to being pinched off.... Examiner asserts that this argument is not persuasive because it is irrelevant since Applicant is referring to hemostasis valves other than the Heck hemostasis valve, which operates differently." The Examiner, however, provides no indication of how she interprets the Heck valve to be operating. Heck specifically states, in column 9, lines 31-32, that "the portioned hemostasis valve (14) acts like a conventional hemostasis valve." The Examiner is taking the position that the Heck valve "operates differently" from a hemostasis valve, even though Heck says her device acts like a conventional hemostasis valve. The Examiner has given no indication how she believes the Heck valve operates. Without such an explanation, Applicants cannot properly formulate arguments for Appeal.

Applicants' representative was granted a telephone interview with the Examiner on February 18, 2004. In response to arguments that one of ordinary skill in the art knows what a hemostasis valve is and would understand that the claimed invention is structurally and functionally different, the Examiner asked where the definition of conventional hemostasis

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valves was obtained. This again indicates the Examiner did not fully review and consider the various references and arguments presented in Applicants' previous response.

In drafting arguments for Appeal, Applicants are left with responding to the Examiner's assertion, without further explanation, that the Heck valve "operates differently" from conventional hemostasis valves. Applicants submit that the Office Action mailed December 31, 2003 does not contain a full and complete response to Applicant's previous arguments and therefore was improperly made final. For the reasons set forth above, Applicants respectfully request the finality of the Office Action be withdrawn and a non final Office Action be issued.

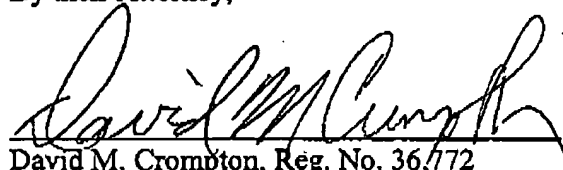
If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Michael S.H. Chu et al.

By their Attorney,

Date: 2/27/04



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